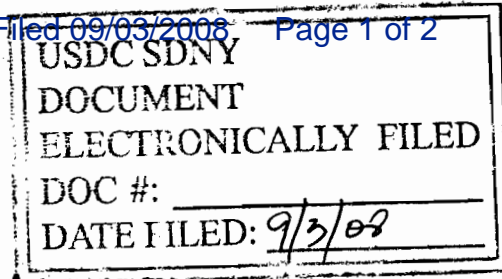


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
ROBERT NEELY, :

Petitioner, :

-against- :

L. MARSHALL, Acting Superintendent, Sing Sing :
Correctional Facility, :

Respondent. :
-----X

ORDER

SIDNEY H. STEIN, U.S. District Judge.

In a Report and Recommendation dated July 14, 2008, Magistrate Judge James C. Francis recommended that this petition for a writ of *habeas corpus* be denied. As of today, the Court's records indicate that no objections have been filed by petitioner.

Afer a *de novo* review of Magistrate Judge Francis' Report and Recommendation dated July 14, 2008,

IT IS HEREBY ORDERED that:

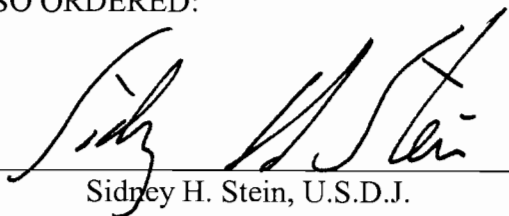
1. Magistrate Judge Francis' "Report and Recommendation" is adopted;
2. The petition pursuant to 28 U.S.C. § 2254 is dismissed;
3. As petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. 28 U.S.C. § 2253 (as amended by the AEDPA); Middleton v. Attorneys Gen. of New York and Pennsylvania, 396 F.3d 207

(2d Cir. 2005) (per curiam); Lucidore v. New York State Div. of Parole, 209 F.3d 107, 111-13 (2d Cir. 2000); Soto v. United States, 185 F.3d 48, 51-53 (2d Cir. 1997); United States v. Perez, 129 F.3d 255, 259-60 (2d Cir. 1997), cert. denied, 525 U.S. 953 (1998); and

4. Pursuant to 28 U.S.C. § 1915(a) the Court certifies that any appeal from this Order would not be taken in good faith.

Dated: New York, New York
September 2, 2008

SO ORDERED:



Sidney H. Stein, U.S.D.J.